

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0528

**Sales and Use Tax
For Tax Year 2002**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use—Aircraft Purchase

Authority: IC 6-2.5-5-8; IC 6-8.1-5-1; 45 IAC 2.2-5-15

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased a helicopter, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the helicopter was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the helicopter and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the helicopter. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the helicopter. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Aircraft Purchase

DISCUSSION

Taxpayer protests the denial of a claim for exemption on the purchase of a helicopter. Taxpayer purchased the helicopter in May of 2002, and did not pay sales tax on the purchase. Taxpayer filed a claim for exemption since the helicopter would be leased or rented to others. The exemption for rental and leasing is found at IC 6-2.5-5-8(b), which states:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property

acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

Also of relevance is 45 IAC 2.2-5-15, which states:

- (a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.
- (b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:
 - (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
 - (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
 - (3) The property is resold, rented or leased in the same form in which it was purchased
- (c) Application of general rule.
 - (1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.
 - (2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.
 - (3) The property must be resold, rented or leased in the same form in which it was purchased.

The Department of Revenue examined taxpayer's claim for the rental and leasing exemption. After examining the information available to it, the Department determined that taxpayer did not qualify for the exemption. The information indicated that taxpayer was not occupationally engaged in the business of renting or leasing the helicopter to others. As a result of this determination, the Department issued a proposed assessment for tax on the purchase of the helicopter.

Taxpayer protested the proposed assessment. The protest letter is little more than a bare statement of protest and an assertion that the Department is wrong. Taxpayer has provided no new documentation and no explanation or analysis of why it does qualify for the rental and leasing exemption.

The Department refers to IC 6-8.1-5-1(b), which states that the taxpayer bears the burden of proving a proposed assessment wrong. As previously explained, taxpayer has not even provided a reason why the Department may be wrong, let alone proven the proposed assessment wrong. Taxpayer has not met the burden imposed by IC 6-8.1-5-1(b).

In conclusion, the Department determined that taxpayer did not qualify for the exemption found in IC 6-2.5-5-8(b). Taxpayer was not renting or leasing the helicopter to others as required by 45 IAC 2.2-5-15. Taxpayer has not met the burden of proving the proposed assessment wrong, as required by IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

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